

Ronald H. Lewis, M.D., Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

ELAINE JAMES, M.D.

Physician's and Surgeon's Certificate
No. G 71988,

Respondent.

Case No. 800-2016-027967

OAH No. 2017080470

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, on August 6, 2018, in Los Angeles, California. Kimberly Kirchmeyer (Complainant) was represented by Nicholas B.C. Shultz, Deputy Attorney General. Elaine James, M.D. (Respondent) appeared telephonically and represented herself.

At the hearing of this matter, the ALJ was provided with Exhibit B which contains confidential medical information protected from disclosure to the public. Redaction of the documents in Exhibit B to obscure this information was not practicable and would not have provided adequate privacy protection. In order to protect the privacy of the individual identified in the documents and to prevent the disclosure of confidential information, the ALJ issued a Protective Order concurrent with this Proposed Decision placing Exhibit B under seal after its use in preparation of this Proposed Decision. Those documents shall remain under seal and shall not be opened, except as provided by the Protective Order. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517 may review the documents subject to the Protective Order provided that such documents are protected from release to the public.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on August 6, 2018.

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FACTUAL FINDINGS

Jurisdiction

1. On April 12, 2017, Complainant filed the Petition to Revoke Probation while acting in her official capacity as the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.
2. Respondent filed a Notice of Defense requesting a hearing on the Petition to Revoke Probation.

Licensing History and Probation Order

3. On July 19, 1991, the Board issued Physician's and Surgeon's Certificate Number G 71988 to Respondent. That certificate expired on August 31, 2015. However, the Board retains jurisdiction over this matter pursuant to Business and Professions Code section 118, subdivision (b), and Condition 13 of Respondent's Board-ordered probation (See Factual Finding 5B).

4A. On September 19, 2014, an Administrative Law Judge issued an Order of Interim Suspension in Case Number 09-2011-216645 (2014 ISO), suspending Respondent from the practice of medicine. (Exhibit 6.)

4B. The 2014 ISO was based on Respondent's 2012 arrest for driving under the influence of prescription medications and her subsequent 2012 conviction for violation of Vehicle Code section 23103, subdivision (a)(reckless driving).

4C. The 2014 ISO also noted:

7. [Respondent] has a pacemaker and has had a stroke in the past. She suffers from bipolar disorder, chronic insomnia, and has a history of manic episodes. She is taking prescription medications to control her medical and mental conditions. Currently, [Respondent] lives in San Antonio, Texas, where she is undergoing medical treatment.
[¶] ... [¶]

10. [Three medical] experts agree that [Respondent] is currently unfit to practice medicine and, in the exercise of good judgment, she should not be practicing medicine at this time.

(Exhibit 6.)

5A. In a Decision and Order (Probation Order) in Case No. 09-2012-221315, dated April 28, 2015, effective May 28, 2015, the Board revoked Respondent's license, stayed the revocation, and placed Respondent on probation for five years on specified terms and

conditions (set forth more fully in Factual Finding 5B, below). The Probation Order was based on the same facts as set forth in the 2014 ISO.

5B. Specifically, Conditions 1, 3, 4, 8, 9, 10, 11, 12, and 13 of the Probation Order state:

1. Actual Suspension

As part of probation, Respondent is suspended from the practice of medicine for 12 months beginning the 16th day after the effective date of this Decision. [¶] . . . [¶]

3. Psychiatric Evaluation

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, Respondent shall undergo and complete a psychiatric evaluation . . . by a Board-appointed board certified psychiatrist, who shall . . . shall furnish a written evaluation report to the Board or its designee. [¶] . . . [¶]

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that respondent is mentally fit to practice medicine safely. The period of time that respondent is not practicing medicine shall not be counted toward completion of the term of probation.

4. Medical Evaluation and Treatment

Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician who shall . . . furnish a medical report to the Board or its designee. [¶] . . . [¶]

Respondent shall not engage in the practice of medicine until notified in writing by the Board or its designee of its determination that respondent is medically fit to practice safely. [¶] . . . [¶]

8. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

9. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. . . .

10. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee.

[¶] . . . [¶]

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

11. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

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12. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If respondent resides in California and is considered to be in non-practice, respondent shall comply with all terms and conditions of probation. . . . A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a respondent residing outside of California, will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

13. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter

is final, and the period of probation shall be extended until the matter is final.

(Exhibit 7.)

Probation Violations

6A. On May 18, 2015, Board Probation Inspector Steven Froberg sent an email to Respondent in an attempt to set up an intake interview to review the Probation Order with Respondent and to ensure that she understood her responsibilities to maintain compliance with the Probation Order. The email stated, "Your probation starts Thursday, May 28, 2015. I need to meet with you here in Cerritos on or before that date for an intake interview. If your current address is out of state . . . you need to contact me so we can make other arrangements." (Exhibit 9.)

6B. Respondent did not respond to the email.

7A. On May 19, 2015, Inspector Froberg sent Respondent a letter addressed to 6709 La Tijera Boulevard, Unit 209, Los Angeles, California. The May 19, 2015 letter informed Respondent that her probation intake interview had been scheduled for May 29, 2015, at the Cerritos District Office to discuss the terms and conditions of her probation.

7B. (1). The La Tijera Boulevard address was Respondent's last known address of record with the Board at that time.

(2). At the administrative hearing, Respondent insisted that between 2011 and 2016, her address of record with the Board was the same as the address on her California driver's license: 16409 Sally Lane in Riverside, California. However, there was no evidence that Respondent submitted a change of address form to the Board. Additionally, the Petition to Revoke Probation in this matter, filed on April 22, 2017, was served at Respondent's La Tijera address of record, and she apparently received it, since she filed a Notice of Defense in response. Furthermore, Respondent acknowledged that she has not lived in California since June 2013 and that she did not notify the Board of her moves to Texas, Florida, or South Carolina.¹

8A. Due to Respondent's non-response to the May 19, 2015 letter, Inspector Froberg sent Respondent another letter, dated May 27, 2015, addressed to the La Tijera Boulevard address of record. The letter informed Respondent that a probation intake interview had been scheduled for June 4, 2015, at the Cerritos District Office to discuss the terms and conditions of her probation.

8B. In an effort to ensure that Respondent received the intake interview letter, Board also sent the letter to another possible address for Respondent: 1826 High Brook

¹ Respondent lived in: Texas from June 2013 through December 2014; Florida from December 2014 through April 2015; and South Carolina from April 2015 until the present.

Court, Jacksonville, Florida. The letter was turned as “not deliverable as addressed.” (Exhibit 12.)

9. Respondent never participated in an intake interview.

10. In May 2016, Board Probation Manager Anne Potter and Inspector Froberg concluded that Respondent was likely living out-of-state. Therefore, the Board placed Respondent in a “tolled” status (indicating that the probationer was living out-of-state).

11. On June 16, 2016, Board Management Services Technician, Maggie Lee, on behalf of Board Inspector Adrienne Smith, sent Respondent a letter at her La Tijera address of record. The letter sought to make contact with Respondent, and further stated:

In reviewing your file, I have noted that your California medical license has been expired on August 31, 2015. Per your Probation Order, Condition 10, GENERAL PROBATION REQUIREMENTS: License Renewal, “Respondent shall maintain a current and renewed California physician’s and surgeon’s license[.]” Please comply with this requirement by July 18, 2016. Failure to comply with this condition of your probation may result in further discipline of your license.

As a reminder, you are required to notify the Medical Board immediately, in writing, of any changes to your name, residence, or business address and telephone numbers.

If you decide to return to the practice of medicine in California, please notify me, in writing, at least 30 days before resuming practice.

(Exhibit 13.)

12A. On July 20, 2016, Maggie Lee, on behalf of Inspector Adrienne Smith, sent Respondent another letter at her La Tijera address of record. The letter stated:

Condition 10 (General Probation Requirements) of your Board Order, under License Renewal: “Respondent shall maintain a current and renewed California physician’s and surgeon’s license.” Your California license has been expired since August 31, 2015 which is a violation of your California probation.

I have sent out a Semi-Annual contact letter dated June 16, 2016 to advise you of your license delinquent status and also to give you 30 days to comply with this condition. As of today, your license is still not being renewed; therefore, I will have to submit a non-compliance report to issue a citation with an order of abatement.

(Exhibit 14.)

12B. The letter was returned and was marked "Return to Sender, No Mail Receptacle, Unable to Forward." (Exhibit 16.)

13. On July 21, 2016, Maggie Lee requested a civil index records search in an attempt to obtain Respondent's current address and phone number.

14A. On August 10, 2016, Maggie Lee, on behalf of Inspector Adrienne Smith, sent Respondent another letter, addressed to 1105 Rumar Street, Columbia, South Carolina. The letter stated:

I have been trying to locate your current address since June, 2016 but I have not been successful. I found few phone numbers through search via the Internet; however, those were incorrect numbers either. I would appreciate when you receive this letter, please contact me at (909) 421-5814 as soon as you can.

It is important to keep the Board informed of your most current address in order to be in compliance with your Probation Order.

(Exhibit 15.)

14B. Respondent did not respond to the Board's attempts to locate her until after receipt of the Petition to Revoke Probation.

15A. At the administrative hearing, Respondent admitted that she had not completed either a psychological evaluation by a Board-approved California psychiatrist or a medical evaluation by a Board-approved California physician. She also admitted that she has not practiced medicine since June 2013 and that her California medical license had expired in August 2015.

15B. Complainant established that:

- (1). Respondent did not attend any intake interview to begin her probation;
- (2). Respondent had not served her Board-ordered suspension period;
- (3). Respondent had not undergone a psychological evaluation by a Board-approved California psychiatrist;
- (4). Respondent had not undergone a medical evaluation by a Board-approved California physician;
- (5). Respondent had failed to file any quarterly reports;
- (6). Respondent had failed to notify the Board in writing of her residence addresses, email address, and telephone number;

(7). Respondent's license had expired on August 31, 2015, and had not been renewed;

(8). Respondent had failed to inform the Board in writing of her traveling outside of California to reside out-of-state since 2013;

(9). Respondent had failed to submit to Board interviews; and Respondent had failed to notify the Board in writing of her periods of non-practice, which at the time of the Petition to Revoke Probation had exceeded two years.

16A. After being served with the Petition to Revoke Probation, Respondent submitted quarterly declarations signed in October 2017, January 2018, and June 21, 2018.

16B. In the June 2018 quarterly declaration, Respondent reported that she had been arrested on June 15, 2018 for alleged trespassing.

Respondent's Testimony

17A. Respondent testified telephonically at the administrative hearing. She was respectful and cooperative.²

17B. Respondent assured the Board that she had never intended to willfully disregard any of the Board's rules and that she was "really sorry to have caused problems for the State of California." Respondent explained that her probation violations stemmed from her financial situation which caused her to "end up homeless in South Carolina," with no money to pay for food or gas. When Respondent's license expired in 2015, her Board-ordered probation was "not the highest priority; it was finding food, water and shelter."

17C. Respondent currently does not have the "financial resources and support network to move back to California" or to obtain employment as a physician. She acknowledged that she cannot fulfill the probationary term requiring that she complete a clinical training program after her lengthy period of non-practice since such a program would require funds she does not have. Respondent also noted that she is "struggling and trying to keep [her] health in check."

17D. Respondent does not want to "give up" her California medical license, and she asked "to be allowed to stay on probation to get well enough to come back to California." She believes she is "still able to practice as physician," but in a capacity involving "more of a sit-down or consultation job." She admitted that she could not return to surgical practice since that involves "standing all day" in an operating room or being on-call. However, she insisted that she is "wise enough to know if there is something [she] is not able to do" and

² Since her testimony was telephonic, her demeanor could not be assessed.

that when she “feel[s] it is frivolous to maintain California licensure, [she] will step out of medicine.”

17E. Respondent asserted that she “will do [her] level best” to return to California to “pick up [her] license and practice.” However, this assertion is belied by her failure to participate in her probation for years and her inability to return to California for this hearing to defend her right to keep her license.

LEGAL CONCLUSIONS

1A. Cause does not exist to revoke Respondent’s probation and impose the stayed revocation of Respondent’s license for failure to comply with Probation Order, Condition Number 1 (serve a 12-month suspension period beginning May 28, 2015), as set forth in Factual Findings 3 through 15, and Legal Conclusion 1B.

1B. Condition 12 of the Probation Order specified, “Periods of non-practice for a respondent residing outside of California, will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.” In this case, Respondent has not practiced medicine since June 2013 when she began residing outside of California. Consequently, Respondent’s period of non-practice outside of California began prior to the May 28, 2015 effective date of the Probation Order, and continued through the present, relieving her of the responsibility to comply with probationary terms and conditions except Conditions 8, 10, and 12.

2. Cause does not exist to revoke Respondent’s probation and impose the stayed revocation of Respondent’s license for failure to comply with Probation Order, Condition Number 3 (undergo psychiatric evaluation with Board-approved psychiatrist), as set forth in Factual Findings 3 through 15, and Legal Conclusion 1B.

3. Cause does not exist to revoke Respondent’s probation and impose the stayed revocation of Respondent’s license for failure to comply with Probation Order, Condition Number 4 (undergo medical evaluation with Board-approved physician), as set forth in Factual Findings 3 through 15, and Legal Conclusion 1B.

4. Cause does not exist to revoke Respondent’s probation and impose the stayed revocation of Respondent’s license for failure to comply with Probation Order, Condition Number 9 (submit quarterly declarations), as set forth in Factual Findings 3 through 15, and Legal Conclusion 1B.

5. Cause exists to revoke Respondent’s probation and impose the stayed revocation of Respondent’s license for failure to comply with Probation Order, Condition Number 10 (notify Board in writing of address changes), as set forth in Factual Findings 3 through 15.

6. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with Probation Order, Condition Number 10 (maintain current and renewed license), as set forth in Factual Findings 3 through 15.

7. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with Probation Order, Condition Number 10 (notify the Board in writing of travel or residence outside California), as set forth in Factual Findings 3 through 15.

8. Cause does not exist to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with Probation Order, Condition Number 11 (appear for interviews), as set forth in Factual Findings 3 through 15, and Legal Conclusion 1B.

9. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with Probation Order, Condition Number 12 (notify the Board in writing of periods of non-practice, and non-practice exceeding two years), as set forth in Factual Findings 3 through 15.

10. Business and Professions Code section 2229 provides, in pertinent part:

(a) Protection of the public shall be the highest priority for the Division of Medical Quality . . . and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.

(b) In exercising his or her disciplinary authority an administrative law judge of the Medical Quality Hearing Panel, [or] the division . . . shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee . . .


11. Respondent failed to participate in any respect with her Board-ordered probation for two years until receipt of the Petition to Revoke Probation. Thereafter, her only attempt at compliance was to file three quarterly reports. Respondent has not renewed her license, and she is financially and medically unable to return to California or to obtain employment as a physician. Although she promised to do her "level best" to return to California and resume medical practice, her promise rings hollow and is belied by her failure to participate in her probation for years and her inability to return to California for a final attempt to retain her license. The foregoing bodes poorly for Respondent's future compliance with and successful completion of her probation. Consequently, revocation is required to protect the public health, safety and welfare.

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ORDER

Physician's and Surgeon's Certificate Number G71988, issued to Respondent, Elaine James, M.D., is hereby revoked.

DATED: August 14, 2018

DocuSigned by:

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Apr. 12 20 17
BY [Signature] ANALYST

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

10 In the Matter of the Petition to Revoke
11 Probation Against:

Case No. 800-2016-027967

12 ELAINE JAMES, M.D.
13 6709 La Tijera Blvd., Unit 209
14 Los Angeles, CA 90045

PETITION TO REVOKE PROBATION

15 Physician's and Surgeon's Certificate
16 No. G 71988,

Respondent.

17
18 Complainant alleges:

19 PARTIES

20 1. Kimberly Kirchmeyer (Complainant) brings this Petition to Revoke Probation solely
21 in her official capacity as the Executive Director of the Medical Board of California (Board),
22 Department of Consumer Affairs.

23 2. On or about July 19, 1991, the Medical Board of California issued Physician's and
24 Surgeon's Certificate Number G 71988 to Elaine James, M.D. (Respondent). The Physician's
25 and Surgeon's Certificate expired on August 31, 2015, and has not been renewed.

26 3. In a disciplinary action entitled *In the Matter of the Accusation Against Elaine James,*
27 *M.D.*, Case No. 09-2012-221315, the Board issued a decision, effective May 28, 2015 ("May
28 2015 Decision"), in which Respondent's Physician's and Surgeon's Certificate was revoked.

1 However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was
2 placed on probation for a period of five (5) years with certain terms and conditions. A copy of the
3 May 2015 Decision is attached as Exhibit A and is incorporated by reference.

4 JURISDICTION

5 4. This Petition to Revoke Probation is brought before the Board under the authority of
6 the following laws. All section references are to the Business and Professions Code (Code)
7 unless otherwise indicated.

8 5. Section 2004 of the Code states:

9 "The board shall have the responsibility for the following:

10 "(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
11 Act.

12 "(b) The administration and hearing of disciplinary actions.

13 "(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
14 administrative law judge.

15 "(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
16 disciplinary actions.

17 "(e) Reviewing the quality of medical practice carried out by physician and surgeon
18 certificate holders under the jurisdiction of the board.

19 "(f) Approving undergraduate and graduate medical education programs.

20 "(g) Approving clinical clerkship and special programs and hospitals for the programs in
21 subdivision (f).

22 "(h) Issuing licenses and certificates under the board's jurisdiction.

23 "(i) Administering the board's continuing medical education program."

24 6. Section 2227 of the Code states:

25 "(a) A licensee whose matter has been heard by an administrative law judge of the Medical
26 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
27 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
28 action with the board, may, in accordance with the provisions of this chapter:

1 “(1) Have his or her license revoked upon order of the board.

2 “(2) Have his or her right to practice suspended for a period not to exceed one year upon
3 order of the board.

4 “(3) Be placed on probation and be required to pay the costs of probation monitoring upon
5 order of the board.

6 “(4) Be publicly reprimanded by the board. The public reprimand may include a
7 requirement that the licensee complete relevant educational courses approved by the board.

8 “(5) Have any other action taken in relation to discipline as part of an order of probation, as
9 the board or an administrative law judge may deem proper.

10 “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
11 review or advisory conferences, professional competency examinations, continuing education
12 activities, and cost reimbursement associated therewith that are agreed to with the board and
13 successfully completed by the licensee, or other matters made confidential or privileged by
14 existing law, is deemed public, and shall be made available to the public by the board pursuant to
15 Section 803.1.”

16 7. Section 118, subdivision (b), of the Code provides:

17 “The suspension, expiration, or forfeiture by operation of law of a license issued by a board
18 in the department, or its suspension, forfeiture, or cancellation by order of the board or by order
19 of a court of law, or its surrender without the written consent of the board, shall not, during any
20 period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
21 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
22 provided by law or to enter an order suspending or revoking the license or otherwise taking
23 disciplinary action against the license on any such ground.”

24 **FIRST CAUSE TO REVOKE PROBATION**

25 **(Failure to Complete Suspension)**

26 8. At all times after the effective date of the May 2015 Decision, Condition No. 1 stated:
27 “As part of probation, Respondent is suspended from the practice of medicine for 12 months
28 beginning the 16th day after the effective date of this Decision.”

1 9. Respondent's probation is subject to revocation because she failed to comply with
2 Condition No. 1 of the May 2015 Decision, referenced above. The facts and circumstances
3 regarding this violation are as follows:

4 10. On or about August 31, 2015, Respondent's Physician's and Surgeon's Certificate
5 expired. Since Respondent's Physician's and Surgeon's Certificate expired before the end of the
6 12-month suspension period and Respondent has not renewed her certificate, the suspension is
7 stayed and incomplete. Respondent's failure to complete her suspension is a violation of her
8 probation.

9 **SECOND CAUSE TO REVOKE PROBATION**

10 **(Failure to Undergo and Complete a Psychiatric Evaluation)**

11 11. At all times after the effective date of the May 2015 Decision, Condition No. 3 stated:
12 "Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis
13 thereafter may be required by the Board or its designee, Respondent shall undergo and complete a
14 psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed
15 certified psychiatrist, who shall consider any information provided by the Board or designee and
16 any other information the psychiatrist deems relevant, and shall furnish a written evaluation report
17 to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the
18 Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay
19 the cost of all psychiatric evaluations and psychological testing.

20 "Respondent shall comply with all restrictions or conditions recommended y the evaluating
21 psychiatrist within 15 calendar days after being notified by the Board or its designee.

22 "Respondent shall not engage in the practice of medicine until notified by the Board or its
23 designee that Respondent is mentally fit to practice medicine safely. The period of time that
24 Respondent is not practicing medicine shall not be counted toward completion of the term of
25 probation."

26 12. Respondent's probation is subject to revocation because she failed to comply with
27 Condition No. 3 of the May 2015 Decision, referenced above. The facts and circumstances
28 regarding this violation are as follows:

1 13. To date, Respondent has not undergone and completed a psychiatric evaluation,
2 thereby violating her probation.

3 **THIRD CAUSE TO REVOKE PROBATION**

4 **(Failure to Undergo a Medical Evaluation)**

5 14. At all times after the effective date of the May 2015 Decision, Condition No. 4 stated:
6 “Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter
7 as may be required by the Board or its designee, Respondent shall undergo a medical evaluation
8 by a Board-appointed physician who shall consider any information provided by the Board or
9 designee and any other information the evaluating physician deems relevant and shall furnish a
10 medical report to the Board or its designee. Respondent shall provide the evaluating physician
11 any information and documentation that the evaluating physician may deem pertinent. The
12 examination shall be general in nature but shall specifically address Respondent’s claimed sleep
13 disorder.

14 “Following the evaluation, Respondent shall comply with all restrictions or conditions
15 recommended by the evaluation physician within 15 calendar days after being notified by the
16 Board or its designee. If Respondent is required by the Board or its designee to undergo medical
17 treatment, Respondent shall, within 30 calendar days of the requirement notice, submit to the
18 Board or its designee for prior approval the name and qualifications of a California licensed treating
19 physician of Respondent’s choice. Upon approval of the treating physician, Respondent shall,
20 within 15 calendar days, undertake medical treatment and shall continue such treatment until
21 further notice from the Board or its designee.

22 “The treating physician shall consider any information provided by the Board or its
23 designee or any other information the treating physician may deem pertinent prior to
24 commencement of treatment. Respondent shall have the treating physician submit quarterly
25 reports to the Board or its designee indicating whether or not Respondent is capable of practicing
26 medicine safely. Respondent shall provide the Board or its designee with any and all medical
27 records pertaining to treatment the Board or its designee deems necessary.

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1 "If, prior to the completion of probation, Respondent is found to be physically incapable of
2 resuming the practice of medicine without restrictions, the Board shall retain continuing
3 jurisdiction over Respondent's license and the period of probation shall be extended until the
4 Board determines that Respondent is physically capable of resuming the practice of medicine
5 without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

6 "Respondent shall not engage in the practice of medicine until notified in writing by the
7 Board or its designee of its determination that Respondent is medically fit to practice safely."

8 15. Respondent's probation is subject to revocation because she failed to comply with
9 Condition No. 4 of the May 2015 Decision, referenced above. The facts and circumstances
10 regarding this violation are as follows:

11 16. To date, Respondent has not undergone a medical evaluation, thereby violating her
12 probation.

13 **FOURTH CAUSE TO REVOKE PROBATION**

14 **(Failure to Submit Quarterly Declarations)**

15 17. At all times after the effective date of the May 2015 Decision, Condition No. 9 stated:
16 "Respondent shall submit quarterly declarations under penalty of perjury on forms provided by
17 the Board, stating whether there has been compliance with all the conditions of probation.

18 "Respondent shall submit quarterly declarations not later than 10 calendar days after the end
19 of the preceding quarter."

20 18. Respondent's probation is subject to revocation because she failed to comply with
21 Condition No. 9 of the May 2015 Decision, referenced above. The facts and circumstances
22 regarding this violation are as follows:

23 19. To date, Respondent has not submitted any quarterly declarations to the Board or its
24 designee, thereby violating her probation.

25 **FIFTH CAUSE TO REVOKE PROBATION**

26 **(Failure to Notify Board of Address Changes)**

27 20. At all times after the effective date of the May 2015 Decision, Condition No. 10
28 ("General Probation Requirements") stated in pertinent part: "Address Changes – Respondent

1 shall, at all times, keep the Board informed of Respondent's business and residence addresses,
2 email address (if available), and telephone number. Changes of such addresses shall be
3 immediately communicated in writing to the Board or its designee. Under no circumstances shall
4 a post office box serve as an address of record, except as allowed by Business and Professions
5 Code section 2021, subdivision (b).

6 "..."

7 21. Respondent's probation is subject to revocation because she failed to comply with
8 Condition No. 10 (General Probation Requirements – Address Changes) of the May 2015
9 Decision, referenced above. The facts and circumstances regarding this violation are as follows:

10 a. On May 12, 2015, the Probation Inspector assigned to Respondent's case, S.F.,
11 attempted to contact Respondent at the telephone numbers listed in the Medical Board's license
12 database, but the numbers did not work. After submitting an inquiry to an Investigator, S. T.,
13 Inspector S.F. was provided with an out-of-state address, two email addresses and a telephone
14 number for Respondent.

15 b. On May 18, 2015, Inspector S.F. sent an email to Respondent to one of the email
16 addresses he had obtained in an attempt to set up an intake interview. Inspector S.F. did not
17 receive a response to that email.

18 c. On May 19, 2015, Inspector S.F. prepared and sent a letter with attachments to
19 Respondent in an attempt to schedule a May 29, 2015, initial intake interview. The letter was
20 mailed to Respondent's address of record, 6709 La Tijera Blvd., Unit 209, Los Angeles, CA
21 90045. The letter was returned undeliverable on May 27, 2015.

22 d. On May 27, 2015, Inspector S.F. sent a letter to Respondent via U.S. postal
23 certified mail to two different mailing addresses: 6709 La Tijera Blvd., Unit 209, Los Angeles,
24 CA 90045 (Respondent's address of record), and an address provided by Investigator S.T. located
25 in Jacksonville, FL. This letter was sent in an effort to reschedule the initial intake interview from
26 May 29, 2015, to June 4, 2015. The envelope to the Los Angeles address was returned with the
27 notation "NO MAIL RECEPTACLE UNABLE TO FORWARD."

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1 e. On June 15, 2015, the envelope that was sent to the Jacksonville, FL address was
2 returned to the L.A. Metro Probation office with the notation "RETURN TO SENDER NOT
3 DELIVERABLE AS ADDRESSED UNABLE TO FORWARD."

4 f. On July 21, 2016, L.A. Metro Probation Management Services Technician M. L.,
5 requested a civil index/records search in an attempt to obtain a current address and residential
6 phone number for Respondent.

7 g. On August 10, 2016, M.L. sent an intent to make contact letter to the most recent
8 address listed on the civil index search results for Respondent, at an address located in Columbia,
9 SC 29203.

10 h. On August 15, 2016, the letter dated July 20, 2016 was returned to the L.A. Metro
11 Probation office with the notation "RETURN TO SENDER NO MAIL RECEPTACLE
12 UNABLE TO FORWARD."

13 i. On October 27, 2016, M.L. again requested a civil index/records search on
14 Respondent to verify her contact information. The results from this search were the same as those
15 from the previous request on July 21, 2016.

16 j. To date, no semi-annual declarations or return mail has been received by the Board
17 or its designee.

18 22. Since the effective date of the May 2015 Decision, the Board's Probation Unit has
19 made numerous attempts to contact Respondent at various addresses, including her address of
20 record. Any mail which the Board sent to Respondent's address of record was returned
21 undeliverable. To date, Respondent has not made any contact with the Board or notified the
22 Board of changes to her address of record, thereby violating her probation.

23 **SIXTH CAUSE TO REVOKE PROBATION**

24 **(Failure to Renew License)**

25 23. At all times after the effective date of the May 2015 Decision, Condition No. 10
26 "General Probation Requirements" stated in pertinent part: "License Renewal – Respondent shall
27 maintain a current and renewed California physician's and surgeon's license. ..."

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1 24. Respondent's probation is subject to revocation because she failed to comply with
2 Condition No. 10 ("General Probation Requirements – License Renewal") of the May 2015
3 Decision, referenced above. The facts and circumstances regarding this violation are as follows:

4 25. On or about August 31, 2015, Respondent's Physician's and Surgeon's Certificate
5 expired. To date, Respondent has not renewed her Physician's and Surgeon's Certificate, thereby
6 violating her probation.

7 **SEVENTH CAUSE TO REVOKE PROBATION**

8 **(Failure to Notify Board of Travel or Residence Outside California)**

9 26. At all times after the effective date of the May 2015 Decision, Condition No. 10
10 "General Probation Requirements" stated in pertinent part: "Travel or Residence Outside
11 California – Respondent shall immediately inform the Board or its designee, in writing, of travel
12 to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more
13 than 30 calendar days.

14 "In the event Respondent should leave the State of California to reside or to practice,
15 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
16 departure and return."

17 27. Respondent's probation is subject to revocation because she failed to comply with
18 Condition No. 10 ("General Probation Requirements – Travel or Residence Outside California")
19 of the May 2015 Decision, referenced above. The facts and circumstances regarding this violation
20 are as follows:

21 28. Complainant refers to and, by this reference, incorporates paragraph 21 and
22 subparagraphs (a) through (j) above as though set forth fully herein.

23 29. A review by the Board's Probation Unit discovered that as of July 21, 2016,
24 Respondent is residing in South Carolina. To date, Respondent has not made any contact with the
25 Board or notified the Board of any plans to travel to or reside outside of California for a period of
26 more than 30 calendar days, thereby violating her probation.

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1 **EIGHTH CAUSE TO REVOKE PROBATION**

2 **(Unavailability for Interview with Board or its Designee)**

3 30. At all times after the effective date of the May 2015 Decision, Condition No. 11
4 stated: "Respondent shall be available in person upon request for interviews either at
5 Respondent's place of business or at the probation unit office, with or without prior notice
6 throughout the term of probation."

7 31. Respondent's probation is subject to revocation because she failed to comply with
8 Condition No. 11 of the May 2015 Decision, referenced above. The facts and circumstances
9 regarding this violation are as follows:

10 32. Complainant refers to and, by this reference, incorporates paragraph 21 and
11 subparagraphs (a) through (j) above as though set forth fully herein.

12 33. Since the effective date of the May 2015 Decision, the Board's Probation Unit has
13 made numerous attempts to contact Respondent at various addresses, including her address of
14 record, in an effort to schedule the initial intake interview. Any mail which the Board sent to
15 Respondent's address of record was returned undeliverable. To date, Respondent has not made
16 any contact with the Board or notified the Board of changes to her address of record, thereby
17 making herself unavailable to be interviewed, which is a violation of her probation.

18 **NINTH CAUSE TO REVOKE PROBATION**

19 **(Failure to Notify Board of Non-Practice While on Probation)**

20 34. At all times after the effective date of the May 2015 Decision, Condition No. 12
21 stated: "Non-Practice While on Probation –

22 "Respondent shall notify the Board or its designee, in writing, within 15 calendar days, of
23 any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of
24 Respondent's return to practice. Non-practice is defined as any period of time Respondent is not
25 practicing medicine in California as defined in Business and Professions Code sections 2051 and
26 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching,
27 or other activity as approved by the Board. All time spent in an intensive training program which
28 has been approved by the Board or its designee shall not be considered non-practice. Practicing

1 medicine in another state of the United States or Federal jurisdiction while on probation with the
2 medical licensing authority of that state or jurisdiction shall not be considered non-practice. A
3 Board-ordered suspension of practice shall not be considered as a period of non-practice.

4 "In the event Respondent's period of non-practice while on probation exceeds 18 calendar
5 months, Respondent shall successfully complete a clinical training program that meets the criteria
6 of Condition 18 of the current version of the Board's 'Manual of Model Disciplinary Orders and
7 Disciplinary Guidelines' prior to resuming the practice of medicine.

8 "Periods of non-practice while on probation shall not exceed two years.

9 "Periods of non-practice will not apply to the reduction of the probationary term.

10 "Periods of non-practice will relieve Respondent of the responsibility to comply with the
11 probationary terms and conditions with the exception of this condition and the following terms
12 and conditions of probation: Obey All Laws; and General Probation Requirements."

13 35. Respondent's probation is subject to revocation because she failed to comply with
14 Condition No. 12 ("General Probation Requirements – Non-Practice While on Probation") of the
15 May 2015 Decision, referenced above. The facts and circumstances regarding this violation are
16 as follows:

17 36. Complainant refers to and, by this reference, incorporates paragraph 21 and
18 subparagraphs (a) through (j) above as though set forth fully herein.

19 37. A review by the Board's Probation Unit discovered that as of November 30, 2016,
20 Respondent is not actively practicing medicine in California. To date, Respondent has not made
21 any contact with the Board or notified the Board of a period of non-practice, thereby violating her
22 probation.

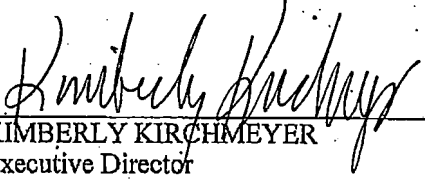
23 PRAYER

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
25 and that following the hearing, the Medical Board of California issue a decision:

26 1. Revoking the probation that was granted by the Board in Case No. 09-2012-221315
27 and imposing the disciplinary order that was stayed, thereby revoking Physician's and Surgeon's
28 Certificate Number G 71988 issued to Elaine James, M.D.;

- 1 2. Revoking or suspending Physician's and Surgeon's Certificate Number G 71988
2 issued to Elaine James, M.D.;
- 3 3. Ordering Elaine James, M.D. if probation is continued or extended, to pay the Board
4 the costs of probation monitoring; and
- 5 4. Taking such other and further action as deemed necessary and proper.

6
7 DATED: April 12, 2017


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

DECISION

Medical Board of California Case No. 09-2012-221315

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

ELAINE JAMES, M.D.)

Case No. 09-2012-221315

Physician's and Surgeon's)
Certificate No. G71988)

Respondent)
_____)

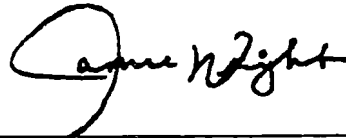
DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 28, 2015.

IT IS SO ORDERED: April 28, 2015.

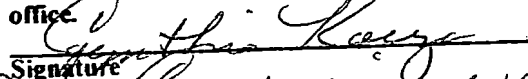
MEDICAL BOARD OF CALIFORNIA



Jamie Wright, J.D., Chair
Panel A

MEDICAL BOARD OF CALIFORNIA

I do hereby certify that this document is a true
and correct copy of the original on file in this
office.



Signature

Title

11/21/2014
Date

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ELAINE JAMES, M.D.

Physician's and Surgeon's
Certificate No. G 71988,

Respondent.

Case No. 09-2012-221315

OAH No. 2014100278

PROPOSED DECISION

This matter came on regularly for hearing on April 13 and 14, 2015, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Tessa L. Heunis, Deputy Attorney General, represented Complainant, Kimberly Kirchmeyer (Complainant), Executive Director of the Medical Board of California (Board).

No appearance was made by or on behalf of Respondent, Elaine James, M.D., despite her having been properly served with notice of the date, time, and location of the hearing.

During the hearing, Complainant amended the Accusation at page 22, line 19, by changing "Discipline" to "Action."

Oral and documentary evidence was received. The record was closed on April 14, 2015, and the matter was submitted for decision.

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SEALING OF PERSONAL INFORMATION

Exhibits 4, 10, 11, 12, 13, 18, 19, and 25 contain unredacted personally identifiable information including names, identifying numbers, and medical records of Respondent and at least one patient. It was not possible to redact that information and preserve the right of public access without obliterating relevant content. Accordingly, on April 16, 2015, to safeguard the privacy of the information, a protective order was issued for exhibits, 4, 10, 11, 12, 13, 18, 19, and 25.

FACTUAL FINDINGS

1. On July 19, 1991, the Board issued Physician's and Surgeon's Certificate Number G 71988 to Respondent. The certificate was in full force and effect at all relevant times. It will expire on August 31, 2015, unless renewed. Respondent does not have any history of license discipline. However, on September 19, 2014, an interim suspension order was issued in connection with the instant matter.

The Criminal Conviction

2. On April 4, 2013, in the Superior Court of California, County of Riverside, in Case Number RIM1208301, Respondent pled guilty and was convicted of violating Vehicle Code section 23103, subdivision (a) (reckless driving), a misdemeanor substantially related to the qualifications, functions and duties of a physician pursuant to California Code of Regulations, title 16, section 1360.

3. Respondent was placed on summary probation for a period of 36 months under various terms and conditions including payment of fines, fees and assessments totaling \$1,260.34, attendance at and completion of a three-month first-offender DUI program, 90 days' incarceration in the Riverside County Jail, to be suspended upon completion of the first-offender program, enrollment in and completion of the MADD Victim Impact Panel, and a prohibition against driving with any measurable amount of alcohol or drugs in her blood.

4. The facts and circumstances underlying the conviction are that, on January 9, 2012, at approximately 9:00 a.m., Respondent drove her car erratically down a thoroughfare, swerving across lanes, greatly varying her speed, and crossing intersections without stopping for red traffic signals. She attempted to turn left into a parking lot but struck a raised median during the maneuver. Respondent's blood subsequently tested positive for benzodiazepines.

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The Psychiatric Evaluation

5. On May 2, 2014, at the Board's request, Respondent underwent a psychiatric evaluation by Manuel Saint Martin, M.D., J.D. At the time of the examination, Respondent was residing in San Antonio, Texas. She was not practicing medicine. After reviewing numerous records, performing a mental status examination, and having Respondent undergo a personality inventory and intelligence quotient (IQ) test, Dr. Saint Martin opined that Respondent could not safely practice medicine. He wrote:

Dr. James is not psychiatrically able to safely practice medicine at this point in time. Her bipolar disorder is not completely controlled and she attempts to cover up symptoms and present herself as fully functioning. Dr. James' cognitive testing, which one would expect she would give her best efforts in order to be perceived as competent, fell in the low average range, which would not be consistent with practicing medicine. Of note during the testing was Dr. James' slow cognitive speed. In other words, it took her longer than normal to process information and act on it. Such slow processing speed may be due to medication side effects or her underlying bipolar condition.

Dr. James supposedly has a primary sleep disorder (primary insomnia). During the time that she committed the DUI and continuing until she came under Dr. [Matthews'] care in Texas, she was taking inordinately high doses of benzodiazepine medications. These medications were supposed to treat her insomnia, but whether this condition truly exists has never been properly tested. The diagnosis of primary insomnia is also questionable because bipolar disorder is within the differential diagnosis of primary insomnia. Thus, in order to diagnose primary insomnia, the clinician must exclude bipolar disorder (or inadequate treatment) as a cause of Dr. James' sleep problems. Dr. James never underwent a sleep study in the 20 years she supposedly has had primary insomnia. The doctors who treated Dr. James for insomnia simply accepted her subjective complaints—which were few—and prescribed high doses of multiple benzodiazepines. A sleep study would have helped clarify her diagnosis.

Dr. James was dependent on benzodiazepines until at least 2013 when she moved to Texas. According to Dr. James' self-report (not substantiated by medical records) she is only taking Ativan and Restoril. This is less benzodiazepines than she took before, but given the fact that the diagnosis of primary insomnia is not clearly established, these medications should be used with caution [*sic*], frequent follow up exams and sparingly.

(Exhibit 10, pages 7-8.)

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6. Dr. Saint Martin testified at the administrative hearing in a manner consistent with his report. His opinions are not entirely convincing for the following reasons:

a. The IQ test Dr. Saint Martin performed on Respondent was the Beta III Intelligence Test (Beta III). Unlike the Wechsler Adult Intelligence Scale Third Edition (WAIS-III) to which he referred in his report as correlating well with the Beta III, the Beta III is strictly a non-verbal test. The WAIS-III measures intelligence on both verbal and non-verbal scales and offers results on both scales as well as a full-scale IQ. Therefore, Dr. Saint Martin failed to determine whether Respondent's IQ would have been higher had she been subjected to verbal IQ testing.

b. At the administrative hearing, Dr. Saint Martin testified that he used the Beta III for Respondent because it does not penalize the examinee for slow motor speed, a characteristic Respondent exhibited. Although Dr. Saint Martin mentioned Respondent's slow cognitive speed during the testing in his report, his report is silent regarding Respondent's motor speed, an issue he raised for the first time at the hearing.

c. Dr. Saint Martin relied largely on the records of Respondent's former psychiatrist, Sandhya Gudapati, M.D. Those records range from January 2007 to August 2010. Dr. Saint Martin did not review any records from Respondent's current psychiatrist, Kenneth Matthews, M.D. Therefore, except for Respondent's self-report of decreased benzodiazepine use, Dr. Saint Martin could neither determine nor opine on her present use. This was a critical omission since he was asked to opine on Respondent's present ability to safely engage in the practice of medicine.

d. Dr. Saint Martin did not offer a diagnosis under either DSM-IV or DSM-5.¹

7. Dr. Saint Martin also reviewed the records of Michelle Clark, M.D., the psychiatrist Respondent saw after Dr. Gudapati. Dr. Clark's most recent treatment entry is dated January 23, 2013. She indicated that Respondent was taking Temazepam, Lorazepam, Xanax, and Lithium Carbonate. Dr. Clark recorded that Respondent was sleeping "fine" at that time. (Exhibit 25, page 89.)

8. Despite the weaknesses in Dr. Saint Martin's report, his opinion that Respondent's bipolar disorder and her continued benzodiazepine use adversely affects her ability to safely practice medicine is supported by the available medical evidence and is credited.

¹ DSM refers to the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association. It is a highly respected and generally accepted tool for diagnosing mental and developmental disorders. DSM-IV and DSM-5 refer to the fourth and fifth editions of the manual. DSM-5 was released in May 2014, the month Dr. Saint Martin performed his evaluation of Respondent.

Allegations of Aiding and Abetting the Unlicensed Practice of Medicine

9. In the Accusation, Complainant alleged, among other things, causes for discipline for aiding and abetting the unlicensed practice of medicine, and violation of a provision or term of the Moscone-Knox Professional Corporation Act (without specifying which provision or term). Both causes for discipline are based on the same alleged facts. Those alleged facts are repeated verbatim below:

37. On or about August 24, 2006, Articles of Incorporation were filed with the Secretary of State in California for the "Kendra Care Medical Group," a Medical Corporation.

38. On or about January 29, 2009, Kendra A., a licensed physician assistant, filed with the Secretary of State in California a Statement of Information regarding "Kendra Care Medical Group," a medical corporation (KendraCare). Kendra A. was named as the Secretary and Chief Financial Officer of the corporation, with Dr. L.T. listed as the Chief Executive Officer. Kendra A. was also named the agent for service of process.

39. On or about July 5, 2011, Respondent became the Chief Executive Officer of KendraCare, with Kendra A. remaining the Secretary and Chief Financial Officer of the corporation.

40. Since its incorporation, KendraCare has had a corporate bank account in its name and, at least until January 16, 2013, only Kendra A. had signing powers on that corporate bank account.

41. On or about January 16, 2013, Kendra A. was interviewed by an investigator for the Medical Board as part of its investigation in this case. At that interview, Kendra A. produced various documents purporting to be Delegation of Services Agreements entered into between herself and various supervising physicians. At least one of these documents reflected that Respondent became the supervising physician for Kendra A. on or about August 10, 2010.² According to the terms of this document, Respondent agreed to review, audit, and countersign every medical record written by Kendra A. within "7-30 days" of the encounter. Respondent further undertook to select and audit the medical records of at least 10% of the patients seen by Kendra A. under any protocols adopted by the Respondent for her.

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² "The date is unclear and could also be August 10, 2012."

42. On or about January 23, 2013, Kendra A. provided the Board with a copy of an agreement purportedly entered into between Respondent and KendraCare on December 10, 2010 (the agreement). As part of the terms of this agreement, Respondent agreed to serve as general physician for KendraCare, doing business as Kare Medical Group, Inc. Her principal duties and responsibilities included that she:

(a) Select, review, sign and date at least 10% of the medical records of patients treated by "the physician assistant" according to the protocols;

(b) Give approval as necessary for "the physician assistant" to transmit a prescription drug order;

(c) Not supervise more than two physician assistants at any time;

(d) Be present between two to three days a week as scheduled and see patients, and

(e) Have 51% ownership in KendraCare.

43. The signatures on the agreement were purportedly dated December 10, 2010, and the agreement itself was stated to be "effective as of 12-10-10," and contradictorily, to "commence 12-10-13."

44. On or about October 26, 2012, in an interview conducted by an investigator for the Medical Board as part of its investigation, Respondent stated that she had been taking care of one particular patient, E.J., for "24 hours, 7 days a week, . . . 4 weeks out of the month and—for two years." Patient E.J. passed away on January 20, 2012.

45. A CURES printout for the period January 1, 2011, through December 31, 2011, shows that approximately 59 patients filled approximately 167 prescriptions for controlled substances during that period, purportedly written by Respondent. The CURES printout shows that, during the same period, approximately 4,985 prescriptions for controlled substances authorized by Kendra A. were filled by approximately 773 patients.

46. In the six months prior to October 26, 2012, Respondent stated she had been at the clinic "maybe . . . five to six times." Respondent stated that Kendra A. had been assisted during this period by various *locum tenens* doctors. Respondent stated that these were all temporary appointments and Respondent was unable to recall their names.

47. A CURES printout for the period April 26, 2012, through October 26, 2012, shows that Respondent purportedly authorized the filling of prescriptions for various controlled substances by approximately 98 patients on approximately 374 occasions.

48. During her interview with the Board on or about October 26, 2012, Respondent stated that she "can prescribe fentanyl or OxyContin or something to that effect" for patients seen by Kendra A. and would do so over the phone. She would then "mail the prescription to the hard script in." According to Respondent, these prescriptions would be for patients, most of whom "belong to her [Kendra A.'s] clinic."

49. A CURES printout for the period October 17, 2011, through October 17, 2012, shows that Respondent filled prescriptions written for her by Kendra A. for controlled substances on approximately thirteen (13) occasions. These included nine (9) prescriptions for Lorazepam.³ During this same period, Respondent filled prescriptions for Lorazepam from another physician on at least six (6) occasions. Also during this same period, Respondent filled prescriptions from at least two physicians for Temazepam,⁴ Alprazolam⁵ or Diazepam⁶ on approximately twenty-five (25) occasions.

50. Respondent ceased to serve as the medical director of Kare Medical Group, Inc., effective on or about May 15, 2013.
(Accusation, Exhibit 1, pages 20-22.)

10. As is more fully explained below, Complaint failed to establish a cause for discipline either for aiding and abetting the unlicensed practice of medicine, or for violating a provision of the Moscone-Knox Professional Corporation Act.

³ "Lorazepam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. It belongs to a group of drugs called benzodiazepines."

⁴ "Temazepam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. It belongs to a group of drugs called benzodiazepines."

⁵ "Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. It belongs to a group of drugs called benzodiazepines."

⁶ "Diazepam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022. It belongs to a group of drugs called benzodiazepines."

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's certificate, pursuant to Business and Professions Code section 2236, subdivision (a), for conviction of a substantially related crime, as set forth in Findings 2, 3, and 4.

2. Cause exists to discipline Respondent's certificate, pursuant to Business and Professions Code section 2236, subdivision (a), for use of dangerous drugs to an extent or in a manner dangerous to the licensee, others, or the public, as set forth in Findings 2, 3, and 4.

3. Cause exists to discipline Respondent's certificate, pursuant to Business and Professions Code section 2239, subdivision (a), for use of dangerous drugs to an extent that it has impaired Respondent's ability to practice medicine safely, as set forth in Findings 2, 3, 4, 5, 6, 7, and 8.

4. Cause does not exist to discipline Respondent's certificate, pursuant to Business and Professions Code sections 2052, subdivision (b), 2264, 3502 or 3502.1, and California Code of Regulations, title 16, sections 1399.540, 1399.541, and 1399.545 for aiding or abetting the unlicensed practice of medicine, as set forth in Findings 9 and 10.

5. Cause does not exist to discipline Respondent's certificate, pursuant to Business and Professions Code sections 2286 or 2408, and Corporations Code section 13401, for aiding or abetting the unlicensed practice of medicine, as set forth in Findings 9 and 10.

6. Cause exists to discipline Respondent's certificate, pursuant to Business and Professions Code sections 2227 and 2234, for general unprofessional conduct, as set forth in Findings 2, 3, 4, 5, 6, 7, and 8.

7. Cause exists for the Board to take action against Respondent's certificate, pursuant to Business and Professions Code section 822, for mental illness affecting competency, as set forth in Findings 2, 3, 4, 5, 6, 7, and 8.

8. The standard of proof which must be met to establish the charging allegations is "clear and convincing proof to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal--so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594; *In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

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The Criminal Conviction

9. The dangers of driving under the influence of drugs are well known, perhaps no more so than by practitioners of the healing arts such as physicians, for whom the ravages of drug abuse and driving under the influence are an everyday experience. Little more could be substantially related to the qualifications, functions and duties of a physician and surgeon than for Respondent to have driven her car while so severely under the influence of drugs as to cause her to swerve across lanes, greatly vary her speed, cross intersections against the traffic signals, and ultimately crash her car into a median. It was only fortuitous that no one was injured or killed by Respondent's actions. Respondent's conduct was the antithesis of a physician's purpose.

10. Respondent has demonstrated no rehabilitation from her criminal act. She remains on probation with the criminal court. Since people have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally placed on the fact that an applicant or licensee has engaged in good behavior while on probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

11. Further, rehabilitation is a qualitative determination, not quantitative. One cannot simply add up those criteria that have been met and those that have not in order to determine whether or not a person has been rehabilitated. These factors are only indicators that a person has changed his or her ways and is, therefore, unlikely to reoffend. No one of them alone – in fact not all of them together – can guarantee that an individual is truly rehabilitated. Therefore, merely meeting the criteria does not excuse a person from responsibility for his or her prior criminal conduct nor entitle him or her to a license.

12. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

13. Respondent bore the burden of proving mitigation and her rehabilitation. As referenced above, she did not appear at the hearing⁷ and therefore offered no oral or documentary evidence of either. Without such proof, the conviction stands alone in its fullest consequence.

⁷ Respondent's request for continuance of the hearing and request for reconsideration were both denied by Presiding Administrative Law Judge Susan Formaker.

Mental Illness Affecting Competency

14. Although Dr. Saint Martin's report and testimony have certain weaknesses as described above, the status of Respondent's bipolar disorder and her benzodiazepine use are of great concern. With both being unstable as of January 2013, no evidence surfaced at the hearing indicating that Respondent's conditions have improved or that she is better fit to practice medicine today than she was then. Public protection mandates that she be prohibited from practicing until such time as she can do so safely.

Allegations of Aiding and Abetting the Unlicensed Practice of Medicine and Violation of the Moscone-Knox Professional Corporation Act

15. It is not clear from the language of the Accusation how Respondent is alleged to have aided and abetted the unlicensed practice of medicine, and the allegation was not proven at the hearing. Kendra A. [REDACTED] (identified as Kendra A. in the Accusation) testified at the hearing that all necessary delegation of services agreements and protocols were in place and that, although Respondent was not at the clinic as often as required by the agreement, she was always available by telephone or other electronic means. Complainant did not produce any patient records or other documents to prove that the agreement was a sham, that Respondent failed to review and approve files, or that either Kendra A. [REDACTED] or Respondent were working beyond their areas of expertise. No other proof was offered that established either the unlicensed practice of medicine by Kendra A. [REDACTED] or the aiding and abetting of the unlicensed practice by Respondent. Complainant's argument that the agreement was actually drawn up in 2013 rather than 2010 because of the appearance of some of the handwritten dates was not convincing in the absence of actual proof of wrongdoing.

16. Similarly, there is also a failure of proof with respect to the alleged violation(s) of the Moscone-Knox Professional Corporation Act. In the Accusation, Complainant alleges that Respondent is subject to discipline pursuant to a number of statutes in the Business and Professions Code and section 13401 of the Corporations Code, "in that she violated, attempted to violate, directly or indirectly, and/or assisted or abetted the violation of, a provision or term of Article 18 (commencing with section 2400), of the Moscone-Knox Professional Corporation Act . . . or of any rules and regulations duly adopted under those laws." Corporations Code section 13401 contains only definitions, and Complainant did not specify the specific statute(s), rule(s), or regulation(s) in the Moscone-Knox Professional Corporation Act Respondent is alleged to have violated. Government Code section 11503, subdivision (a) requires Complainant to both "set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his or her defense," and "specify the statutes and rules that the respondent is alleged to have violated." Even if she had been more specific in the pleading, Complainant failed to prove, by clear and convincing evidence to a reasonable certainty, that Respondent violated any provision of that Act.

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The Discipline to be Imposed

17. The lack of mitigation and rehabilitation evidence, standing alone, does not warrant outright revocation of Respondent's certificate. Business and Professions Code section 2229 states:

(a) Protection of the public shall be the highest priority for the Division of Medical Quality, the California Board of Podiatric Medicine, and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.

(b) In exercising his or her disciplinary authority an administrative law judge of the Medical Quality Hearing Panel, the division, or the California Board of Podiatric Medicine, shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence.

(c) It is the intent of the Legislature that the division, the California Board of Podiatric Medicine, and the enforcement program shall seek out those licensees who have demonstrated deficiencies in competency and then take those actions as are indicated, with priority given to those measures, including further education, restrictions from practice, or other means, that will remove those deficiencies. Where rehabilitation and protection are inconsistent, protection shall be paramount.

18. In this case, rehabilitation and public protection are not inconsistent. In almost 24 years of practice, this is the first time Respondent's license has been disciplined. However, Respondent is unable to safely practice medicine at this time, and she must be allowed enough time to get her drug intake under control and demonstrate rehabilitation from her criminal act. This can be accomplished by the imposition of a properly-conditioned probationary license. Those terms and conditions must include, but not be limited to, a substantial suspension from medical practice to give Respondent the opportunity to adjust her medications to the point that she can safely practice. She must also undergo and pass both a physical⁸ and mental examination as conditions precedent to the return to practice.

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⁸ The physical examination should be general in nature but must specifically address Respondent's alleged sleep disorder.

ORDER

Certificate No. G 71988 issued to Respondent, Elaine James, M.D., is revoked. However, the revocation is stayed, and Respondent is placed on probation for five years upon the following terms and conditions.

1. Actual Suspension

As part of probation, Respondent is suspended from the practice of medicine for 12 months beginning the 16th day after the effective date of this Decision.

2. ~~Controlled Substances- Maintain Records and Access to Records and Inventories~~

Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

3. Psychiatric Evaluation

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

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Respondent shall not engage in the practice of medicine until notified by the Board or its designee that Respondent is mentally fit to practice medicine safely. The period of time that Respondent is not practicing medicine shall not be counted toward completion of the term of probation.

4. Medical Evaluation and Treatment

Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician who shall consider any information provided by the Board or designee and any other information the evaluating physician deems relevant and shall furnish a medical report to the Board or its designee. Respondent shall provide the evaluating physician any information and documentation that the evaluating physician may deem pertinent. The examination shall be general in nature but shall specifically address Respondent's claimed sleep disorder.

Following the evaluation, Respondent shall comply with all restrictions or conditions recommended by the evaluating physician within 15 calendar days after being notified by the Board or its designee. If Respondent is required by the Board or its designee to undergo medical treatment, Respondent shall, within 30 calendar days of the requirement notice, submit to the Board or its designee for prior approval the name and qualifications of a California licensed treating physician of Respondent's choice. Upon approval of the treating physician, Respondent shall, within 15 calendar days, undertake medical treatment and shall continue such treatment until further notice from the Board or its designee.

The treating physician shall consider any information provided by the Board or its designee or any other information the treating physician may deem pertinent prior to commencement of treatment. Respondent shall have the treating physician submit quarterly reports to the Board or its designee indicating whether or not Respondent is capable of practicing medicine safely. Respondent shall provide the Board or its designee with any and all medical records pertaining to treatment the Board or its designee deems necessary.

If, prior to the completion of probation, Respondent is found to be physically incapable of resuming the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is physically capable of resuming the practice of medicine without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

Respondent shall not engage in the practice of medicine until notified in writing by the Board or its designee of its determination that Respondent is medically fit to practice safely.

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5. Solo Practice Prohibition

Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) Respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that location.

If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, Respondent's practice setting changes and Respondent is no longer practicing in a setting in compliance with this Decision, Respondent shall notify the Board or its designee within five calendar days of the practice setting change. If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall not resume practice until an appropriate practice setting is established.

6. Notification

Within seven days of the effective date of this Decision, Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carriers.

7. Supervision of Physician Assistants

During probation, Respondent is prohibited from supervising physician assistants.

8. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

9. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

10. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

11. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

12. Non-Practice While on Probation

Respondent shall notify the Board or its designee, in writing, within 15 calendar days, of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

13. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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14. License Surrender

Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall, within 15 calendar days, deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

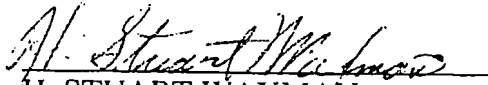
15. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

16. Completion of Probation

Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

Dated: April 17, 2015


H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings